IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.
JUDGMENT.

Jai Chand vs. Mst. Devi Bai & ors.

S.B. Civil Second Appeal No.102/88 against the judgment and decree dated 25.5.1988 passed by the learned District Judge, Sirohi in Civil Appeal No.28/86.

Date of Judgment: February 13, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Ms. B.L. Purohit, for the appellant.

BY THE COURT:

This second appeal is against the judgment and decree dated 25.5.1988 passed by the learned District Judge, Sirohi by which the appeal of the plaintiff-appellant was dismissed. The trial court dismissed the suit and appeal was dismissed by the first appellate court, therefore, this second appeal.

The appeal was admitted by this Court on 4.2.1993 after framing substantial questions of law. During the pendency of the appeal, the appellant has submitted application that respondent no.1 Devi Bai and respondent no.2 Ram Chandra have died. Respondent no.2 was impleaded as power of attorney holder of Devi Bai and he had no personal interest in the property. So far as respondent no.1 Devi Bai is concerned, she died leaving behind no legal heir. According to the learned counsel for the appellant, in fact the suit was for prohibitory

injunction with prayer that respondent Devi Bai be restrained from taking possession of the property on the basis of the alleged sale certificate issued in her favour or on the basis of the decision given by this Court in S.B.Civil Second Appeal No.140/71. The S.B.Civil Second Appeal No.140/71 was decided by this Court by judgment dated 19.7.1973 and by the said judgment, the appeal of Kalu and Ram Chandra against the appellant was allowed and this Court set aside the judgment and decree of the first appellate court which was in favour of the present appellant and dismissed the suit of the plaintiff, in execution of which first appellate court's decree, the appellant got the possession of the suit property. According to the learned counsel for the appellant, since more than 30 years, the appellant is in possession of the suit property and the contesting respondent no.1 Devi Bai died long ago and she has no legal heir left, therefore, the appellant has no threat of eviction from the suit property from any body, neither from Devi Bai nor from Ram Chandra or from respondent no.3 Kalu. In view of the above, in fact the suit itself has become infructuous as the suit was for injunction.

In view of the above statement of the learned counsel for the appellant, the present appeal is dismissed on the ground that the suit itself has become infructuous.

(**PRAKASH TATIA),J.**

mlt.